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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/706,888

11/13/2003

Prabodh P. Parekh

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08/18/2010

INTERNATIONAL FLAVORS & FRAGRANCES INC.  
521 WEST 57TH ST  
NEW YORK, NY 10019

EXAMINER

GULLEDGE, BRIAN M

ART UNIT

PAPER NUMBER

1612

MAIL DATE

DELIVERY MODE

08/18/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/706,888	<b>Applicant(s)</b> PAREKH ET AL.	
	<b>Examiner</b> Brian Gulledge	<b>Art Unit</b> 1612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 18 March 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,3-9,11-16 and 18-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-9,11-16 and 18-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 18 March 2010 has been entered.

The Examiner further acknowledges that the submission was originally responded to as if it was a request for reconsideration after a final rejection (see advisory action mailed 7 April 2010). The Examiner notes that the present action is the first consideration of the claims on the merits since the submission on 18 March 2010.

### ***Previous Rejections***

Applicants' arguments, filed July 22, 2009, have been fully considered. Rejections and/or objections not reiterated from previous office actions are hereby withdrawn. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set presently being applied to the instant application.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**Claims 1, 3-9, 11-16, and 19-20 stand rejected under 35 U.S.C. 103(a) as being unpatentable over O'Connor (US Patent 6,432,891) in view of Rohe et al. (US Patent 4,968,496).** The Applicant argues that the rejection over O'Connor in view of Rohe et al. is not proper. Applicant states that after reviewing the teachings of Rohe et al., one skilled in the art would recognize that an improved deoderant composition cannot be obtained through routine optimization. The Applicant further states that the claimed invention is directed to a malodor-counteracting composition that possesses unexpectedly superior effects compared to similar compositions, and that neither Rohe et al. or O'Connor recognize the criticality of the types and concentrations of the malodor counteractants claimed.

The Examiner is not persuaded by these arguments. The Examiner does not agree that the art in counteracting malodors is unpredictable, and cannot be obtained through routine optimization. The Applicant provides no evidence to support this statement, and the prior art does not support this statement. Further, both O'Connor and Rohe et al. teach compositions to counteract malodor, and the combination of the two renders the claims prima facie obvious. Optimization would not even be necessary, as each reference teaches how to use the ingredients recited to counteract malodor

The Applicant refers to the data presented in the previously filed declaration (filed under 37 CFR 1.131) to support the conclusion that the claimed composition possesses unexpectedly superior effects compared to similar compositions. However, the Applicant has not discussed specifically how the data presented in the declaration supports this conclusion. And Applicant has the burden of explaining the data in any declaration that is proffered as evidence of non-obviousness. See MPEP 716.02(C)(II).

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The data presented in Exhibit C presents combinations of Tegosorb 50 (which appears to contain zinc ricinoleate) at various concentrations with CB mixtures (which appear to be mixtures of at least some of the monocyclic compounds recited by the instant claims), as well as data for the Tegosorb 50 alone and the CB mixture alone. However, the CB mixture is not fully defined, and it is thus unclear how these mixtures relate to the scope of the claims. Also, not all of the data is presented, as the table is partially cut off (the data beyond 36 hours is not entirely shown). Additionally, the data is not explained, in that it is unclear what some of the entries mean (such as the difference between an “X” and “fatty” for a time measurement).

**Claims 18 and 21 stand rejected under 35 U.S.C. 103(a) as being unpatentable over O'Connor (US Patent 6,432,891) in view of Rohe et al. (US Patent 4,968,496) as applied to claim 1 above, and further in view of Pavlin et al. (US Patent 5,783,657).** Applicant argues that the rejection is not proper, because the claims depend from claim 1, which was improperly rejected over O'Connor and Rohe et al. The Examiner does not agree with this argument, for the reasons discussed above with regards to the rejection of claim 1 over O'Connor and Rohe et al.

### ***Conclusion***

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Gullledge whose telephone number is (571) 270-5756. The examiner can normally be reached on Monday-Thursday 6:00am - 3:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frederick Krass can be reached on (571) 272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

BMG

/Frederick Krass/  
Supervisory Patent Examiner, Art Unit 1612